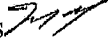


# Memo

**To:** Board of Managers  
**From:** Michael Younes, Director of Municipal Operations   
**CC:** Shana R. Davis-Cook, Village Manager  
**Date:** 11/5/2015  
**Re:** Lease Authorization – Administrative Office Copy Machine

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## Background

The Village's main copy machine<sup>1</sup> is over five (5) years old and has made over 816,000 copies. Initially the machine was scheduled for replacement in the FY2016 CIP, however, late in FY2015 staff began exploring lease options instead of outright purchase. As a result of staff's research, which is presented below, outright purchase was not recommended and therefore the replacement cost was removed from the FY2016 prior to budget adoption.

As is the case with most technology, as age and use increase service reliability and quality decrease. The Village's main copy machine has been no exception. Over the past year, we have experienced an exponential increase in service and quality related issues. Routinely during the preparations for monthly Board meetings and during the printing of the briefing materials for these meetings the machine overheats causing jamming, which delays the process while staff spends time clearing the various paper jams. Color quality has also sharply decreased over the life of the copy machine, even with the replacement of the internal rollers and drums and use of higher resolution toner, image quality is still poor.

The copy machine also serves as the Village's primary fax and scanner, further increasing the critical operational need in the office for a reliable multi-function copy machine. Because the machine serves multiple functions, when the machine is out of service for an extended period of time while waiting for parts or repairs, faxing and scanning functions are often not available during this times as well.

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<sup>1</sup> The Village has a second copy machine, which is located in the Police Department. That machine, which serves as the back-up when the main copier is down) is currently functioning well. When the time comes to replace that machine, staff will determine if leasing a replacement is a cost-effective solution for that unit, given its lighter use.

### Lease vs. Purchase

In the past the Village has purchased its copy machines outright from either the vendor directly or an authorized dealer. After much research, staff recommends leasing instead of outright purchase for the following reasons:

1. Lower overall cost.
2. Flexible lease terms.
3. Easy upgrade of equipment without penalty during lease agreement.
4. Automatic machine replacement if a specific issue occurs three (3) time within a given period of time.
5. Loaner program if extended repairs are required.
6. No need to sell old equipment following end of lease term or when replacement is scheduled.

Below is a cost comparison between leasing and purchase:

<b>Outright Purchase</b> <i>(based on last purchase in 2010)</i>		<b>Lease Option</b> <i>(based on 60-month Lease)</i>	
\$14,349	Initial Purchase Cost	\$17,668.20	Lease Cost
	Maintenance (per year)		Maintenance (per year)
5,170	Year 1	3,412.80	Year 1
5,690	Year 2	3,412.80	Year 2
6,210	Year 3	3,412.80	Year 3
6,900	Year 4	3,754.08	Year 4*
7,596	Year 5	4,129.49	Year 5*
<b>\$45,915</b>	<b>Total Purchase/Maintenance</b>	<b>\$35,790.17</b>	<b>Total Lease/Maintenance</b>

\*Assumes a maximum increase of 10% per year in year 4 and 5.

In the past, annual maintenance costs have increased approximately 10% each year. Under the proposed government lease agreement, annual maintenance costs are locked in for the first 3 years. Following year 3, maintenance rates can increase no more than 10% for year 4 and 5.

Under both options, all toner, replacement parts and repair labor costs are included as part of the annual maintenance agreement. The cost of staples are included as part of the lease agreement. Paper costs are excluded in both options.

All of the following jurisdictions lease their copy machines at varying term lengths: City of College Park, Montgomery County, Charles County, Cities of Rockville, Gaithersburg and Takoma Park.

Staff has reviewed the lease and associated maintenance for other dealers and recommends the Village lease directly with **Konica Minolta Business Solutions** for the following reasons:

- Lease rate is lowest and does not increase during the lease term.

- Annual Maintenance contract is locked in for the first three (3) years and years 4 and 5 increases are capped at 10%.
- Lease would be with Konica Minolta directly rather than a third party financing company.
- No volume commitment of number of b/w and color copies.

The old copy machine will be sold through a government surplus auction website; the amount received from the sale will be credited to the Village's General Fund Balance. No budget amendments are required to execute the proposed lease agreement and pricing structure.

The proposed copy machine replacement is in accordance with the Chevy Chase Village Operational Plan for Equipment.

Pursuant to Village policy, Village Counsel has reviewed and approved the terms and conditions of the Lease and associated maintenance Agreement.

### **Board Action Requested**

Draft Motion:

*I move to **AUTHORIZE** the Village Manager to enter into an agreement, in substantially the form provided, with Konica Minolta Business Solutions U.S.A., Inc. for the lease and maintenance of a new bizhub c554e multi-function copy machine.*

### **Attachment**

Lease and Maintenance Agreement



KONICA MINOLTA

For office use only (Check one): ☐ Branch ☐ Windsor

## Premier Lease Agreement

APPLICATION NUMBER

AGREEMENT NUMBER

This Premier Lease Agreement ("Agreement") is written in "Plain English". The words you and your, refer to the customer (and its guarantors). The words Lessor, we, us and our, refer to Konica Minolta Premier Finance, a program of Konica Minolta Business Solutions U.S.A., Inc., its subsidiaries and affiliates. (Supplier)

### CUSTOMER INFORMATION

FULL LEGAL NAME

STREET ADDRESS

CITY

STATE

ZIP

PHONE\*

FAX

BILLING NAME (IF DIFFERENT FROM ABOVE)

BILLING STREET ADDRESS

CITY

STATE

ZIP

E-MAIL

EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)

\*By providing a telephone number for a cellular phone or other wireless device, you are expressly consenting to receiving communications (for NON-marketing or solicitation purposes) at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system from Lessor and its affiliates and agents. This Express Consent applies to each such telephone number that you provide to us now or in the future and permits such calls. These calls and messages may incur access fees from your cellular provider.

### CUSTOMER ONE GUARANTEE

The Konica Minolta equipment leased in this Agreement is covered under Konica Minolta's Customer One Guarantee. A copy of the Guarantee can be obtained at your local branch or [www.kmbs.konicaminolta.us](http://www.kmbs.konicaminolta.us).



KONICA MINOLTA

CUSTOMER ONE GUARANTEE

MAKE / MODEL NO. / ACCESSORIES (including Software Description and Supplier / Licensor if applicable)

☐ See attached 'Schedule A' for additional Equipment / Accessories / Software

### TERM AND PAYMENT SCHEDULE

TERM IN MONTHS

# of payments

Payment Frequency

Payment Amount  
(plus applicable taxes)

Advance Payment  
(plus applicable taxes)

☐ Quarterly ☐ Monthly

\$

\$

END OF LEASE OPTIONS: You will have the following options at the end of the original term, provided the Lease has not terminated early and no event of default under the Lease has occurred and is continuing.  
1. Purchase the Equipment for the Fair Market Value as determined by us. 2. Renew the Lease per paragraph 1 (on reverse). 3. Return Equipment as provided in Paragraph 5 (on reverse).

**THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT: THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.**

### LESSOR ACCEPTANCE

Konica Minolta Premier Finance

LESSOR

AUTHORIZED SIGNER

TITLE

DATED

### CUSTOMER ACCEPTANCE

X

FULL LEGAL NAME OF CUSTOMER (as referenced above)

AUTHORIZED SIGNER

DATED

FEDERAL TAX I.D. #

PRINT NAME

TITLE

### CONTINUING GUARANTEE

As additional inducement for us, Konica Minolta Premier Finance to enter into the Agreement, the undersigned ("you") unconditionally, jointly and severally, personally guarantees that the customer will make all payments and meet all obligations required under this Agreement and any supplements fully and promptly. You agree that we may make other arrangements including compromise or settlement with you and you waive all defenses and notice of those changes and presentment, demand, and protest and will remain responsible for the payment and obligations of this Agreement. We do not have to notify you if the customer is in default. If the customer defaults, you will immediately pay in accordance with the default provision of the Agreement all sums due under the terms of the Agreement and will perform all the obligations of the Agreement. If it is necessary for us to proceed legally to enforce this guarantee, you expressly consent to the jurisdiction of the court set out in paragraph 13 and agree to pay all costs, including attorneys fees incurred in enforcement of this guarantee. It is not necessary for us to proceed first against you before enforcing this guarantee. By signing this guarantee, you authorize us to obtain credit bureau reports for credit and collection purposes.

X

SIGNATURE

(NO TITLES)

DATED

PRINT NAME OF GUARANTOR

To help the Government fight the funding of terrorism and money laundering activities, Federal Law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. What this means is, when you open an account, we will ask for your name, address and other information that will allow us to identify you; we may also ask to see identifying documents.

See reverse side for additional terms and conditions

KMPF0001 - US 01/07/14

1. **LEASE AGREEMENT:** You agree to lease from us the personal property described under "MAKE/MODEL/ACCESSORIES" and as modified by supplements to this Agreement from time to time signed by you and us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. To the extent the Equipment includes intangible property or associated services such as periodic software licenses and prepaid database subscription rights, such property shall be referred to as the "Software". You agree to all of the terms and conditions contained in this Agreement and any Schedule, which together are a complete statement of our Agreement regarding the listed equipment ("Agreement") and supercedes all other writings, communications, understanding, agreements, any purchase order and any solicitation documents and related documents. This Agreement may be modified only by written Agreement and not by course of performance. This Agreement becomes valid upon execution by you or us. The Equipment is deemed accepted by you under this Agreement unless you notify us within three (3) days of delivery that you do not accept the Equipment and specify the defect or malfunction. In that event, at our sole option, we or our designee will replace the defective item of Equipment or this Agreement will be canceled and we or our designee will repossess the Equipment. You agree that, upon our request, you will sign and deliver to us, a delivery and acceptance certificate confirming your acceptance of the Equipment leased to you. The "Billing Date" of this Agreement will be the twentieth (20th) day following installation. You agree to pay a prorated amount of 1/30th of the monthly payment times the number of days between the installation date and the Billing Date. This Agreement will continue from the Billing Date for the Term shown and will be extended automatically for successive one (1) month terms unless you (a) send us written notice, between ninety (90) days and one hundred fifty (150) days before the end of any term, of your decision to return or purchase the Equipment or renew this Lease or (b) you do not purchase or return the Equipment, as specified in your notice, within ten (10) days after the end of the term. Leases with \$1.00 purchase options will not be renewed. The periodic renewal payment has been set by mutual agreement and is not based on the cost of any component of this lease. **THE BASE RENTAL PAYMENT SHALL BE ADJUSTED PROPORTIONATELY UPWARD OR DOWNWARD, IF THE ACTUAL COST OF THE EQUIPMENT EXCEEDS OR IS LESS THAN THE ESTIMATE PROVIDED TO LESSEE.** If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others. You authorize us to insert or correct missing information on this lease including your proper legal name, serial numbers, other numbers describing the Equipment and other omitted factual matters. You agree to provide updated annual and/or quarterly financial statements to us upon request. You authorize us or our agent to obtain credit reports and make credit inquiries regarding you and your financial condition and to provide your information, including payment history, to our assignee or third parties having an economic interest in this Agreement or the Equipment.

2. **RENT:** Rent will be payable in installments, each in the amount of the Monthly Payment (or other periodic payment) shown plus any applicable sales, use and property tax. If we pay any tax on your behalf, you agree to reimburse us promptly along with a processing fee. Subsequent rent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period or as otherwise agreed. We will have the right to apply all sums received from you to any amounts due and owed to us under the terms of this Agreement. **Your obligation to make all Monthly Payments (or other periodic payment) hereunder is absolute and unconditional and you cannot withhold or offset against any Monthly Payments (or other periodic payment) for any reason.** You agree that you will remit payments to us in the form of company checks (or personal checks in the case of sole proprietorships), direct debit or wires only. You also agree cash and cash equivalents are not acceptable forms of payment for this Agreement and that you will not remit such forms of payment to us. **WE BOTH INTEND TO COMPLY WITH ALL APPLICABLE LAWS. IF IT IS DETERMINED THAT YOUR PAYMENTS UNDER THIS AGREEMENT RESULT IN AN INTEREST PAYMENT HIGHER THAN ALLOWED BY APPLICABLE LAW, THEN ANY EXCESS INTEREST COLLECTED WILL BE APPLIED TO AMOUNTS THAT ARE LAWFULLY DUE AND OWING UNDER THIS AGREEMENT OR WILL BE REFUNDED TO YOU. IN NO EVENT WILL YOU BE REQUIRED TO PAY ANY AMOUNTS IN EXCESS OF THE LEGAL AMOUNT.**

3. **OWNERSHIP OF EQUIPMENT:** We are the owner of the Equipment and have sole title (unless you have a \$1.00 purchase option) to the Equipment (excluding Software). You agree to keep the Equipment free and clear of all liens and claims. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to, hard drives, disk drives or any other form of memory.

4. **WARRANTY DISCLAIMER: WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABILITY. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE ARE LEASING THE EQUIPMENT TO YOU "AS-IS".** You acknowledge that none of Supplier or their representatives are our agents and none of them are authorized to modify the terms of this Agreement. No representation or warranty of Supplier with respect to the Equipment will bind us, nor will any breach thereof relieve you of any of your obligations hereunder. You are aware of the name of the manufacturer or supplier of each item of Equipment and you will contact the manufacturer or supplier for a description of your warranty rights. You hereby acknowledge and confirm that you have not received any tax, financial, accounting or legal advice from us, the manufacturer or Supplier of the Equipment. **THIS AGREEMENT CONSTITUTES A "FINANCE LEASE" AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. You agree that the Customer One Guarantee is a separate and independent obligation of Supplier to you, that no assignee of the Lessor shall have any obligation to you with respect to the Guarantee and that your obligations under this Agreement are not subject to setoff, withholding, reduction, counterclaim or defense for any reason whatsoever including, without limitation, any claim you may have against Supplier with respect to the Customer One Guarantee.**

5. **LOCATION OF EQUIPMENT:** You will keep and use the Equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Agreement's term, if you do not purchase the Equipment, you will return the Equipment to a location we specify at your expense, in retail resalable condition (normal wear and tear acceptable), full working order, and in complete repair.

6. **LOSS OR DAMAGE:** You are responsible for the risk of loss or for any destruction of or damage to the Equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You agree to promptly notify us in writing of any loss or damage and you will then pay to us the present value of the total of all unpaid Monthly Payments (or other periodic payments shown) for the full Agreement term plus the estimated fair market value of the Equipment at the end of the originally scheduled term, all discounted at four percent (4%) per year. Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney in fact to execute in your name any insurance drafts or checks issued due to loss or damage to the Equipment.

7. **COLLATERAL PROTECTION AND INSURANCE:** You are responsible for installing and keeping the Equipment in good working order. Except for ordinary wear and tear, you are responsible for protecting the Equipment from damage and loss of any kind. If the Equipment is damaged or lost, you agree to continue to pay the amounts due and to become due hereunder without setoff or defense. During the term of this Agreement, you agree that you will (1) insure the equipment against all loss or damage naming us as loss payee, (2) obtain liability and third party property damage insurance naming us as an additional insured; and (3) deliver satisfactory evidence of such coverage with carriers, policy forms and amounts acceptable to us. All policies must provide that we be given thirty (30) days written notice of any material change or cancellation. If you do not provide evidence of acceptable insurance, we have the right, but no obligation, (a) to obtain insurance covering our interest (and only our interest) in the Equipment for the lease term, and renewals. Any insurance we obtain will not insure you against third party or liability claims and may be cancelled by us at any time. In that event you will be required to pay us an additional amount each month for the insurance premium and an administrative fee. The cost may be more than the cost of obtaining your own insurance. You agree that we, or one of our affiliates, may make a profit in connection with the insurance we obtain. You agree to cooperate with us, our insurer and our agent in the placement of coverage and with claims or, (b) we may waive the insurance requirement and charge you a monthly property damage surcharge in the amount of .0035 of the original equipment cost to cover our credit risk, administrative costs and other costs, as would be further described on a letter from us to you and on which we may make a profit. If you later provide evidence that you have obtained acceptable insurance, we will cancel the insurance we obtained or cease charging the surcharge.

8. **INDEMNITY:** We are not responsible for any loss or injuries caused by the installation or use of the Equipment. You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment. **We reserve the right to control the defense and to select or approve defense counsel. This indemnity survives the expiration or termination of this Agreement.**

9. **TAXES AND FEES:** You agree to pay when invoiced all taxes (including personal property tax, fines and penalties) and fees relating to this Agreement or the Equipment. You agree to (a) reimburse us for all personal property taxes which we are required to pay as Owner of the Equipment or to remit to us each month our estimate of the monthly equivalent of the annual property taxes to be assessed. If you do not have a \$1.00 purchase option, we will file all personal property, use or other tax returns and you agree to pay us a processing fee for making such filings. You agree to pay us up to \$75.00 on the date the first payment is due as an origination fee. We reserve the right to charge a fee upon termination of this Agreement either by trade-up, buy-out or default. Any fee charged under this Agreement may include a profit and is subject to applicable taxes.

10. **ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT.** We may sell, assign, or transfer this Agreement and/or the Equipment without notice. You agree that if we sell, assign, or transfer this Agreement and/or the Equipment, the new lessor will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new Lessor will not be subject to any claims, defenses, or set offs that you may have against us whether or not you are notified of such assignment. The cost of any Equipment, Software, services and other elements of this Agreement has been negotiated between you and the Supplier. None of Lessor's assignees will independently verify any such costs. Lessor's assignees will be providing funding based on the payment you have negotiated with Supplier. You are responsible for determining your accounting treatment of the appropriate tax, legal, financial and accounting components of this Agreement.

11. **DEFAULT AND REMEDIES:** (a) If you do not pay any lease payment or other sum due to us or other party when due or (b) if you break any of your promises in the Agreement or any other Agreement with us or (c) if you, or any guarantor of your obligations become insolvent or commence bankruptcy or receivership proceedings or have such proceedings commenced against you, you will be in default. If any part of a payment is more than three (3) days late, you agree to pay a late charge of ten percent (10%) of the payment which is late or if less, the maximum charge allowed by law. If you are ever in default, we may do any one or all of the following: (a) instruct Supplier to withhold service, parts and supplies and / or void the Customer One Guarantee; (b) terminate or cancel this Agreement and require that you pay, **AS LIQUIDATED DAMAGES FOR LOSS OF BARGAIN AND NOT AS A PENALTY**, the sum of: (i) all past due and current Monthly Payments (or other periodic payments) and charges; (ii) the present value of all remaining Monthly Payments (or other periodic payments) and charges, discounted at the rate of four percent (4%) per annum (or the lowest rate permitted by law, whichever is higher); and (iii) the present value (at the same discount rate as specified in clause (ii) above) of the amount of any purchase option with respect to the Equipment or, if none is specified, our anticipated value of the Equipment at the end of the term of this Agreement (or any renewal thereof); and (c) require you to return the Equipment to us to a location designated by us (and with respect to any Software, (i) immediately terminate your right to use the Software including the disabling (on-site or by remote communication) of any Software; (ii) demand the immediate return and obtain possession of the Software and re-license the Software at a public or private sale; and/or (iii) cause the Software supplier to terminate the Software license, support and other services under the Software license). We may recover interest on any unpaid balance at the rate of four percent (4%) per annum but in no event more than the lawful maximum rate. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in the State of Lessor or its Assignee or any other law. You agree to pay our reasonable costs of collection and enforcement, including but not limited to attorney's fees and actual court costs relating to any claim arising under this Agreement including, but not limited to, any legal action or referral for collection. If we have to take possession of the Equipment, you agree to pay the cost of repossession. The net proceeds of the sale of any repossessed Equipment will be credited against what you owe us. **YOU AGREE THAT WE WILL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL INDIRECT OR INCIDENTAL DAMAGES FOR ANY REASON WHATSOEVER.** You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. All of our rights are cumulative. It is further agreed that your rights and remedies are governed exclusively by this Agreement and you waive lessee's rights under Article 2A (508-522) of the UCC.

12. **UCC FILINGS:** You grant us a security interest in the Equipment if this Agreement is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument in order to show our interest in the Equipment.

13. **CONSENT TO LAW, JURISDICTION, AND VENUE:** This Agreement shall be deemed fully executed and performed in the state of Lessor or its Assignee's principal place of business and shall be governed by and construed in accordance with its laws. If the Lessor or its Assignee shall bring any judicial proceeding in relation to any matter arising under the Agreement, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in the state of the Lessor or its Assignee's principal place of business, or in any court or courts in Customer's state of residence, or in any other court having jurisdiction over the Customer or assets of the Customer, all at the sole election of the Lessor. The Customer hereby irrevocably submits generally and unconditionally to the jurisdiction of any such court so elected by Lessor in relation to such matters. **BOTH PARTIES WAIVE TRIAL BY JURY IN ANY ACTION BETWEEN US.**

14. **LESSEE GUARANTEE:** You agree, upon our request, to submit the original of this Agreement to the Lessor via overnight courier the same day of the facsimile or other electronic transmission of the signed Agreement. Both parties agree that this Agreement signed and submitted to us by facsimile or other electronic transmission shall, upon execution by us (manually or electronically, as applicable), be binding upon the parties. You waive the right to challenge in court the authenticity of a faxed or other electronically-transmitted signed copy of this Agreement and agree that the faxed or other electronically-transmitted copy containing your faxed or other electronically-transmitted signature and our manual or electronic signature shall be considered the sole original for all purposes, including without limitation, any enforcement action under paragraph 11.

15. **COMPUTER SOFTWARE:** Notwithstanding any other terms and conditions of this Agreement, you agree that as to Software only: a) We have not had, do not have, nor will have any title to such Software, b) You have executed or will execute a separate software license Agreement and we are not a party to and have no responsibilities whatsoever in regards to such license Agreement, c) You have selected such Software and as per Agreement paragraph 4, **WE MAKE NO WARRANTIES OF MERCHANTABILITY, DATA ACCURACY, SYSTEM INTEGRATION OR FITNESS FOR USE AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR THE FUNCTION OR DEFECTIVE NATURE OF SUCH SOFTWARE, SYSTEMS INTEGRATION, OR OTHERWISE IN REGARDS TO SUCH SOFTWARE. CUSTOMER'S LEASE PAYMENTS AND OTHER OBLIGATIONS UNDER THIS LEASE AGREEMENT SHALL IN NO WAY BE DIMINISHED ON ACCOUNT OF OR IN ANY WAY RELATED TO THE ABOVE SAID SOFTWARE LICENSE AGREEMENT OF FAILURE IN ANY WAY OF THE SOFTWARE.**



KONICA MINOLTA

## ADDENDUM TO PREMIER LEASE AGREEMENT

This Addendum forms and is made a part of that certain Premier Lease Agreement ("Agreement") between Konica Minolta Premier Finance and Chevy Chase Village ("Customer") executed by Customer on \_\_\_\_\_, 2015. Capitalized terms used herein but not defined herein will have the same meaning given to them in the Agreement. Both parties agree that the Agreement is revised as follows:

1. The second sentence in section 5 of the Agreement, which is entitled LOCATION OF EQUIPMENT, is restated in its entirety as follows: "At the end of the Agreement's term, if you do not purchase the Equipment, we will remove the Equipment at our expense in retail salable condition (normal wear and tear excepted), full working order, and in complete repair."
2. Section 8 of the Agreement, which is entitled INDEMNITY, is restated in its entirety as follows: "We are not responsible for any loss or injuries caused by the installation or use of the Equipment. Subject to and without waiving common law and other governmental immunities and the provisions §5-301 *et. Seq.*, Local Government Tort Claims Act, Courts and Judicial Proceedings Article, Annotated Code of Maryland, you agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment. We reserve the right to join in the defense of a matter at our own expense. This indemnity survives the expiration or termination of this Agreement for claims or losses that occurred during the initial or any renewal term of this Agreement."
3. Section 13 of the Agreement, which is entitled CONSENT TO LAW, JURISDICTION AND VENUE, is restated in its entirety as follows: "This Agreement shall be deemed fully executed and performed in the state of Maryland and shall be governed by and construed in accordance with its laws. If the Lessor or its Assignee shall bring any judicial proceeding in relation to any matter arising under the Agreement, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in the State of Maryland. The Customer hereby irrevocably submits generally and unconditionally to the jurisdiction of any such court. BOTH PARTIES WAIVE TRIAL BY JURY IN ANY ACTION BETWEEN US."

All other terms and conditions of the Agreement shall remain unchanged and in full force and effect. All handwritten, typed or "red-lined" additions and/or deletions on the Agreement are null and void and of no force or effect. The changes contained in this Addendum shall apply to only the Agreement to which it is incorporated and is not a precedent for future lease transactions.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to Premier Lease Agreement on \_\_\_\_\_, 2015.

Konica Minolta Premier Finance

Chevy Chase Village

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**KMBS Standard Maintenance Terms and Conditions - Schedule A****(Updated September 1, 2015)**

The following terms and conditions apply to the provision of services by Konica Minolta Business Solutions U.S.A., Inc. (KMBS) to the Customer during the term of this Agreement.

**Equipment Services**

**100. Service Coverage Hours:** Standard services under this Agreement are provided during normal business hours 8am-5pm, Monday through Friday, exclusive of core National holidays observed by KMBS.

**101. Extended Coverage Services:** Extended coverage services outside of standard coverage hours may be available on a per-event charge or fixed monthly premium.

**102. Equipment Services:** Equipment services provided under this Agreement include labor and parts required to maintain covered Equipment in a normal operating condition as set forth in the equipment specifications detailed on <http://kmbs.konicaminolta.us>.

**103. Equipment Exchange:** Equipment exchange will be used for Equipment where on-site support is not available. KMBS will employ a 'hot swap' process and will provide packaging for return of the original unit. Customer is responsible to facilitate the reconnection and return process.

**104. Preventative Maintenance:** Preventive maintenance shall be performed as needed to ensure optimal operation of Equipment. This includes component replacement, adjustments and cleaning. End-user maintenance as defined in the Equipment's user guide is not covered.

**105. Disclaimer:** Repairs and/or services that fall outside the scope of this Agreement may be billed at prevailing hourly rates with prior authorization. This includes but is not limited to abuse/misuse, alteration or modification, 3rd party interference, use of nonstandard supplies, usage beyond recommended operating parameters, theft, neglect, fire, water, casualty or other natural force. Failure to authorize repair and/or services may result in suspension or termination of this Agreement.

**106. Site Environment:** Customer shall be responsible to ensure that Equipment is placed in a location that meets manufacturer's requirements (available on the KMBS website) including space, power, network, temperature and humidity. Electrical power must meet voltage, amperage and electrical noise level requirements. KMBS personnel will be granted reasonable and safe access to perform services when required.

**107. Prerequisite to service:** For Equipment not previously under a continuous maintenance agreement, KMBS may need to confirm the Equipment is in good working condition before the start of this Agreement. Remedial service may be required to bring the Equipment to proper operating standards and the labor and parts associated will be billed at prevailing rates. A quote will be provided for Customer approval before work begins.

**108. Relocation and Move Preparation:** When requested, relocation services will be performed and billed at prevailing rates. Coverage at the new location is subject to service availability and acceptance by KMBS.

**109. Initial Installation:** Physical installation, removal of packing material and initial setup of Equipment will be performed by KMBS

using default configuration settings at the location specified by Customer. Application of custom settings can be requested prior to installation. KMBS reserves the right to assess additional charges depending upon the extent of custom setup requirements.

**110. Service Replacement:** KMBS reserves the right to replace a device, at no additional cost to Customer, with a comparable unit when repair of the original device is not practical or economically feasible.

**111. Color Calibration and Management:** Routine and periodic color calibration and management of production color print profiles is not covered by this Agreement.

**112. Additional Customer Requested Services:** Customer may request services be performed that are outside the scope of this Agreement. Such services will be quoted and performed at agreed rates.

**Supplies and Consumables**

**200. Consumable Supplies:** If a supplies inclusive option is selected, KMBS will provide toner for covered Equipment on an as needed basis. Consumable supplies do not include staples (unless selected) or paper. Wide format equipment may have other coverage options and/or exclusions. The consumable supplies provided are the property of KMBS until they are consumed and are intended to be used exclusively in the covered Equipment. Customer bears the risk of loss of unused supplies in the event of theft, employee misconduct, fire or other mishap.

**201. Expected Yield:** Pricing under this Agreement is based on published and commercially reasonable expectations of supply and consumables consumption. At its discretion, KMBS may perform an audit of supply/consumables consumption and Equipment usage data to determine consumption levels. In the event the actual consumption levels exceed the levels used to determine contract pricing by more than 20%, KMBS shall have the right to invoice for the excess consumption.

**202. Supply Source:** Genuine Konica Minolta supplies will be used under this Agreement for Konica Minolta Equipment. For non-Konica Minolta products KMBS will provide fully compatible toner and print cartridges for use in covered Equipment.

**203. Supply shipping and handling:** KMBS may charge a supply shipping and handling fee on each periodic invoice regardless of whether supplies are shipped in any particular period. This is done to average out the total estimated supply shipping and handling fees over the duration of this contract. The current calculation for such fees can be found at <http://kmbs.konicaminolta.us/faqs>. KMBS reserves the right to charge for expedited supply orders (i.e. overnight delivery) where requested by Customer.

**204. Auto Supply Delivery:** If services are provided as part of a managed services agreement, KMBS requires a designated Customer contact(s) to confirm supply shipments via email and maintain delivery address information via [MyKMBS.com](http://MyKMBS.com) or other agreed methodology.

**Software and Solutions**

**300. Licenses:** KMBS hereby grants the Customer the non-exclusive, non-transferable right to install, and use the software,

**KMBS Standard Maintenance Terms and Conditions - Schedule A**

(Updated September 1, 2015)

updates, upgrades and patches included in this Agreement, provided the Agreement is in effect.

301. **License Reactivation:** Customer is responsible to safeguard software license keys. KMBS may charge a reactivation fee in the event license keys need to be regenerated.

302. **Site Environment:** Customer shall be responsible to insure that software is installed in an environment that meets manufacturer's requirements including operation system level, disk space, power, network, temperature and humidity.

303. **Data Backups and restoration:** Customer is responsible to manage server data backups. KMBS recommends adherence to industry best practices for backup procedures. In the event of a catastrophic data loss, the Customer is expected to restore the environment and data to prior state.

304. **Access:** Customer shall provide KMBS personnel with access to the servers and/or Equipment where the software is installed. Customer shall arrange and ensure that one of its employees or designated agents are present at all times when KMBS is performing maintenance and support services.

305. **Solutions warranty:** KMBS makes no warranty regarding the fitness of software that may or may not have been executed in conjunction with this Agreement for any particular use. If any 3rd party software or services are included at the time of sale, those warranties would be covered under the 3rd party end user license agreement or the master agreement between the 3rd party and KMBS.

306. **Solution Integration:** Solution integration with print output devices covered under this or another agreement may be affected by existing Customer software, configuration changes or other network environment issues. KMBS reserves the right to assess additional charges to resolve complex integration issues, including situations where the solution was initially provided by KMBS.

307. **Term:** Coverage for both level 0 (Software maintenance) and level 1 (Helpdesk support) begin at time of installation of software at Customer's location. Level 1 support is only available when level 0 supports are in effect.

**Software Maintenance (Level 0) and Helpdesk (Level 1)**

400. **Software Maintenance (Level 0):** If this option is selected, the Customer is entitled support as defined in the 'Patches and Updates' sections.

401. **Patches and Updates:** Customer is eligible to receive periodic maintenance patches, hot-fixes and updates for licensed software covered under maintenance. Excluded are full version upgrades (i.e. v1.2 to v2.0) and the installation services required to install patches, hot-fixes and updates.

402. **Access to patches and updates:** Customer will be provided access to a website operated by KMBS or 3rd party supplier where patches and updates are accessible for download.

403. **Start of service:** Start of service rules may vary by OEM, software activation is expected within 30 days of purchase or install whichever comes first.

404. **Current version:** Customer is required to keep software and OS at the latest recommended version levels. Failure to perform recommended updates may result in suspension and/or termination of services under this Agreement.

405. **Solutions Helpdesk Support (Level 1):** If this option is selected, expert helpdesk support is available to the Customer to assist with covered software solutions including, PageScope Enterprise, Print Groove, Dispatcher Pro and select 3rd party solutions. Included are helpdesk services related to end-user support, baseline workflows, features and administrative functions involved in the operation of the software and workflows. Customer participation is required for remote and/or on-site support.

**Professional Services, Solutions and Network**

500. **Initial Assessment:** Customer agrees to provide or assist in gathering network configuration details needed by KMBS to perform contracted services.

501. **Basic Network Services (BNS):** BNS, where offered, covers common network integration in a MS Windows™ centric environment with typical network schema and print/scanning requirements. KMBS reserves the right to assess additional fees depending on the extent of the network integration requirements needed.

502. **Technical Pilot:** When required Customer agrees to participate in a technical pilot where software installation, configuration, use cases and integration requirements are determined. Customer also agrees to participate in testing of the system(s).

503. **Solution Baseline:** Solution baseline is defined as the operating level and configurations agreed to by Customer and KMBS upon completion of the technical pilot and testing.

504. **Enhancements:** Enhancements and professional services beyond the baseline capabilities of the solution are available at an additional charge.

505. **Digital Connected Support:** Unless this option has been declined, expert helpdesk support is available to the Customer to assist with issues associated with device connectivity to network, printing from desktop applications, graphics application, scanning and support on many other digital machine functions. Configuration updates that are the result of changes to the Customer network environment are not included.

506. **Customer Data:** KMBS shall not be liable for any claims, damages and cost relating to loss of data or disclosure of data due to acts or omissions of Customer or its employees, end-user errors or release of administrator password.

507. **Hard Drive Security:** If 'bizhub SECURE' or a comparable option has been ordered, KMBS will provide advanced security services. These services include real-time, hard-drive encryption (level 2 encryption — comparable to Department of Defense standards and US Air Force standards) and document data security through disk over-write as well as user mailbox data deletion, HDD encryption, HDD lock and administrative password (according to Customer policy).



**KMBS Standard Maintenance Terms and Conditions - Schedule A****(Updated September 1, 2015)**

**508. Professional Services Projects:** When requested by the Customer, KMBS can provide professional services associated with the enhancement of the Customer's printing, network connectivity, end of life hard drive disposal, fleet management, user experience, production management, job tracking and document environment. Such projects will be quoted and upon approval, performed and billed at prevailing hourly or per-instance rates.

**509. Basic Production Services (BPS):** Complex products are offered with comprehensive end-user training (BPS). The training is crucial to proper equipment operation and to ensure the Customer achieves satisfactory output. Service related to operator deficiency will be performed and billed at prevailing rates. Additional end user training when requested can be provided and will be billed at prevailing rates.

**Meter and related**

**600. Meter Readings:** Customer agrees to provide KMBS with a timely meter reading prior to the end of the billing period to be used to generate maintenance invoices. Should the Customer fail to provide KMBS with timely meter reads KMBS reserves the right to estimate meter readings. Repetitive failure of Customer to provide timely and accurate meter readings may result in the conversion of associated Equipment to flat monthly fee billing.

**601. Definition of a Print:** Each 8.5"x11" image generated by the covered Equipment is considered a 'print'. Larger paper sizes result in images that are a multiple of a single print based on length (17"=2 prints, 27" = 3 prints, 36" = 4 prints and over 36" =5 prints). For 'wide format' equipment, one square foot of output equals one print. Duplex images count as twice the rate of simplex prints.

**602. Electronic Meter Collection:** KMBS offers vCare and other network based machine data collection methods for Customer convenience, billing accuracy and to enhance service effectiveness. Unless specifically directed otherwise, KMBS will enable vCare or network monitoring on capable Equipment. Should Customer opt-out of utilizing vCARE, KMBS reserves the right to assess an incremental invoicing fee not to exceed twenty-five dollars (\$25) per invoice

**603. Fleet Device Monitoring:** If the Customer agrees to allow KMBS to install and maintain server based software to monitor the printing devices on the Customer network, and the monitoring software cannot reliably operate in the Customer's environment for any reason, KMBS reserves the right to suspend or terminate services under this Agreement.

**Renewal and Maintenance**

**700. Automatic renewal:** At the end of the initial term of this Agreement, coverage will be extended for an additional one year term at then prevailing rates, unless either party has provided notice pursuant to 'Termination' clause below.

**701. Customer Price Protection:** At the end of the first year of this Agreement and once each successive 12-month period during the initial term, KMBS may increase the maintenance base and usage charges. The annual increase in the maintenance and base usage charges will not exceed 10%.

**702. Aggregate Meter Billing:** Increases in the maintenance and base usage charges for contracts with aggregate meter billing will

occur at the annual anniversary of the initial establishment of the usage pool.

**703. Auto Add of Equipment:** Where the use of 'Fleet Device Monitoring' as part of a managed print program has been agreed to, it will be used to detect new devices and add such devices to this Agreement at pre-established price levels. The added device(s) will be covered under the terms of this Agreement. The Customer will be notified via email and may reject the addition of the device(s) by contacting KMBS.

**Payment and Termination**

**800. Terms of Payments:** Payments are due 30 days from the invoice date. Customer shall be responsible to pay all applicable sales, use, personal property or other taxes when due. NO CASH PAYMENTS ACCEPTED. Accepted manners of payment are by major credit card, check made payable to KMBS, or ACH transfer.

**801. Remedies and Collection:** Accounts that are past due are subject to a suspension of services and may be subject to a monthly late fee based on 1.5% of the total amount due and reasonable recovery of costs associated with collections.

**802. Default:** Should Customer violate any aspect of this Agreement including payment obligations, or in the event Customer is insolvent and/or declares bankruptcy, KMBS may suspend or terminate any or all portions of this Agreement and may enter the Customer's premises to recover property or equipment owned by KMBS.

**803. Termination:** During the term of this Agreement or any renewal thereof, the Customer or KMBS may provide the other party 30-day written notice of cancellation or intention not to renew with or without cause. If the Customer terminates within the initial term, the Customer will be subject to termination charges per paragraph

**804.**

**804. Early Termination:** In the event Customer terminates this Agreement during the initial term or KMBS terminates due to material breach by the Customer, the Customer will be responsible to pay liquidated damages equal to 3 months billing based on the prior actual billing over the last 12 months.

**General Legal**

**900. Business Purpose:** Customer warrants and represents that the Equipment under this Agreement will be used for business purposes and not for personal, household or family purposes or other uses deemed illegal or infringing on the copyrights of others. Customer also warrants Equipment will be used directly by the Customer and will not be made available for resale without the express written consent of KMBS.

**901. Assignment:** Customer may not assign this Agreement without KMBS's express written consent. KMBS may assign, without notice to Customer, any of its rights under this Agreement.

**902. Notices:** All notices required to be given under this Agreement shall be in writing and shall be sent by U.S. first class mail to the parties as follows: To Customer at the address listed on the front of this Agreement and to KMBS at Konica Minolta Business Solutions U.S.A., Inc., 500 Day Hill Rd., Windsor, CT 06095 Attention: Contracts Department.

**KMBS Standard Maintenance Terms and Conditions - Schedule A**

(Updated September 1, 2015)

**903. WARRANTY:** KMBS WARRANTS THAT THE SERVICES SHALL BE PERFORMED IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS AND SPECIFICATIONS FOR THE EQUIPMENT. KMBS MAKES NO OTHER WARRANTIES WHATSOEVER EXPRESS OR IMPLIED WITH REGARD TO THE SERVICE, THE SOFTWARE INCLUDED WITH THE EQUIPMENT OR ITS INSTALLATION, OR MAINTENANCE, AND EXPRESSLY DISCLAIMS AND CUSTOMER WAIVES ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**904. LIMITATIONS ON RECOVERY: CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE REPAIR OF THE EQUIPMENT OR REPLACEMENT OF A NONCONFORMING PART, AT THE OPTION OF KMBS. THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, DAMAGES DUE TO LOSS OF DATA OR INFORMATION OF ANY KIND, LOSS OF OR DAMAGE TO REVENUE, PROFITS OR GOODWILL, DAMAGES DUE TO ANY INTERRUPTION OF BUSINESS, DAMAGE TO CUSTOMER'S COMPUTERS OR NETWORKS, EVEN IF KMBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES RESERVE THE RIGHT TO RECOVER CONTRACT DAMAGES ALLOWED VIA THIS AGREEMENT. KMBS'S LIABILITY UNDER THIS AGREEMENT IS LIMITED TO DAMAGES ON THE COST OF ALTERNATE MAINTENANCE SERVICES AND/OR CONSUMABLES PURCHASED BY THE CUSTOMER. THE PARTIES AGREE ANY CLAIM MUST BE BROUGHT WITHIN ONE YEAR AFTER THE ALLEGED DAMAGES ARE INCURRED.**

**905. Applicable Law:** This Agreement shall be governed by the laws of the State of New Jersey without regard to choice of law principles. In the event of litigation or other proceedings by KMBS to enforce or defend any term or provision of this Agreement, Customer agrees to pay all costs and expenses sustained by KMBS, including but not limited to, reasonable attorney's fees. Customer further agrees to litigate any dispute concerning this matter in the federal or state courts in the State of New Jersey, consents to jurisdiction in that forum and waives the right to jury trial.

**906. Force Majeure:** Neither party shall be responsible for delays or failure in performance of this Agreement (other than failure to make payment) to the extent that such party was hindered in its performance by any act of God, labor dispute, or any other occurrence beyond its reasonable control.

**907. Waiver and Severability:** Failure by KMBS to enforce any provisions of this Agreement or any rights hereunder, or failure to exercise any election provided for herein, shall in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the party's right to later enforce or exercise the same or other provisions, rights, or elections it may have under this Agreement. If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of the remaining provisions of this Agreement.

**908. Original Document:** This Agreement may be executed in any number of counterparts and each fully executed counterpart shall be deemed an original. The parties agree (a) that facsimile or

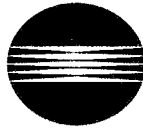
electronic signature shall be accepted as original signatures; and (b) that this Agreement or any document created pursuant to this Agreement, may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. KMBS may accept orders electronically from Customer pursuant to this Agreement. In any legal proceeding relating to this Agreement, the parties waive their right to raise any defense based on the execution of this Agreement in counterparts; or the delivery of such executed counterparts by copy, facsimile, or electronic delivery; or KMBS's acceptance of orders electronically.

**909. Entire Agreement:** This is the entire agreement between Customer and KMBS on the subject matter hereof and supersedes any proposal or prior agreement, oral or written, or any other communications relating to maintenance services for KMBS equipment and it may not be released, discharged, changed, or modified except by an instrument in writing signed by a duly authorized representative of each party. Customer agrees that any Purchase Order or other documentation issued to KMBS covering the equipment or maintenance is issued for purpose of authorization and Customer's internal use only, and any terms and conditions contained therein shall not modify or add to the terms and conditions of this Agreement. This Agreement will not be effective until accepted by an authorized representative of KMBS. Notice of acceptance is hereby waived by Customer.

**910. Sellers Agent:** Customer is advised no employee, representative or agent of KMBS has authority to bind KMBS to commitments not specifically set forth in this agreement.

**911. Modification of Original Terms and Conditions:** Any mutually agreed modifications are to be specified in the comments of the contract or by a duly executed amendment to this Agreement.

**912. Indemnification:** Customer shall bear all risk of theft, loss, or damage not caused by KMBS employees or agents, to all Equipment delivered and accepted under this Agreement. Customer agrees to indemnify, defend and hold harmless KMBS, its officers, directors, employees and agents from all loss, liability, claims or expenses (including reasonable attorney's fees) arising out of Customer's use of the equipment, including but not limited to liabilities arising from illegal use of KMBS equipment as well as bodily injury, including death, or property damage to any person, unless said injuries, death or property damage was caused solely as the result of KMBS's gross negligence or willful misconduct.



KONICA MINOLTA

**Amendment No. 1  
TO THE  
KMBS Standard Maintenance Terms and Conditions – Schedule A**

This Amendment No. 1 ("Amendment") dated \_\_\_\_\_ ("Amendment Effective Date") to the KMBS Standard Maintenance Terms and Conditions – Schedule A Agreement ("Agreement"), made effective as of \_\_\_\_\_, ("Agreement Effective Date") by and between Konica Minolta Business Solutions U.S.A., Inc. ("KMBS") and Chevy Chase Village ("Customer"). Unless otherwise set forth herein, the Agreement shall govern. Any capitalized terms not defined herein in this Amendment shall be given their meanings set forth in the Agreement.

*Whereas*, KMBS and Customer each desire to amend the Agreement terms as expressly set forth herein.

*Therefore*, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants contained herein, the parties agree to modify and otherwise amend the Agreements as follows:

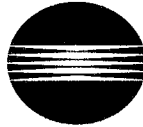
1. The Sections below have been modified as follows:

**111. Color Calibration and Management:** Routine and periodic color calibration and management of production color print profiles is covered by this Agreement.

**306. Solution Integration:** Solution integration with print output devices covered under this or another agreement may be affected by existing Customer software, configuration changes or other network environment issues. After notice to Customer, KMBS reserves the right to assess additional charges to resolve complex integration issues, including situations where the solution was initially provided by KMBS.

**700. Automatic renewal:** At the end of the initial term of this Agreement, coverage will be extended for an additional one year term at then prevailing rates, unless either party has provided notice pursuant to 'Termination' clause below. KMBS will notify Customer in writing at least 60 days prior to the end of the initial term, or any additional term.

**803. Termination:** During the term of this Agreement or any renewal thereof, the Customer or KMBS may provide the other party 30-day written notice of cancellation or intention not to renew with or without cause. **901. Assignment:** Neither party may assign this Agreement without the other party's express written consent. KMBS may assign, without notice to Customer, any of its rights under this Agreement.



## KONICA MINOLTA

**904. LIMITATIONS ON RECOVERY: CUSTOMER'S EXCLUSIVE REMEDY FOR CONTRACT DAMAGES FOR BREACH OF WARRANTY SHALL BE REPAIR OF THE EQUIPMENT OR REPLACEMENT OF A NONCONFORMING PART, AT THE OPTION OF KMBS. THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, DAMAGES DUE TO LOSS OF DATA OR INFORMATION OF ANY KIND, LOSS OF OR DAMAGE TO REVENUE, PROFITS OR GOODWILL, DAMAGES DUE TO ANY INTERRUPTION OF BUSINESS, DAMAGE TO CUSTOMER'S COMPUTERS OR NETWORKS, EVEN IF KMBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES RESERVE THE RIGHT TO RECOVER CONTRACT DAMAGES ALLOWED VIA THIS AGREEMENT. KMBS'S LIABILITY UNDER THIS AGREEMENT IS LIMITED TO DAMAGES ON THE COST OF ALTERNATE MAINTENANCE SERVICES AND/OR CONSUMABLES PURCHASED BY THE CUSTOMER. THE FOREGOING LIMITATION OF LIABILITY IS NOT INTENDED TO LIMIT EITHER PARTY'S LIABILITY FOR NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT.**

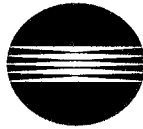
**905. Applicable Law:** This Agreement shall be governed by the laws of the State of Maryland without regard to choice of law principles. In the event of litigation or other proceedings by either party to enforce or defend any term or provision of this Agreement, the non-prevailing party agrees to pay all costs and expenses sustained by the prevailing party, including but not limited to, reasonable attorney's fees. The parties further agree to litigate any dispute concerning this matter in the federal or state courts in the State of Maryland, consent to jurisdiction in that forum and waive the right to jury trial.

**907. Waiver and Severability:** Failure by either party to enforce any provisions of this Agreement or any rights hereunder, or failure to exercise any election provided for herein, shall in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the party's right to later enforce or exercise the same or other provisions, rights, or elections it may have under this Agreement. If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of the remaining provisions of this Agreement.

**911. Modification of Original Terms and Conditions:** Any mutually agreed modifications are to be specified by a duly executed amendment to this Agreement.

**912. Indemnification:** Customer shall bear all risk of theft, loss, or damage not caused by KMBS employees or agents, to all Equipment delivered and accepted under this Agreement. Subject to and without waiving common law and other governmental immunities and the provisions §5-301 et. Seq., Local Government Tort Claims Act, Courts and Judicial Proceedings Article, Annotated Code of Maryland, Customer agrees to indemnify, defend and hold harmless KMBS, its officers, directors, employees and agents from all loss, liability, claims or expenses (including reasonable attorney's fees) arising out of Customer's intentional misuse, or negligent use of the equipment, or the negligent or intentional acts of Customer, its officials, employees, or agents, including but not limited to liabilities arising from illegal use of KMBS equipment as well as bodily injury, including death, or property damage. KMBS agrees to indemnify, defend and hold harmless the Customer, its officials, employees and agents, from all loss, liability, claims or expenses (including reasonable attorney's fees) arising out of KMBS's intentional misuse, or negligent use, of the equipment, negligent maintenance of the equipment, or the negligent or intentional acts of KMBS, its officials, employees, or agents, including but not limited to bodily injury, including death, or property damage.

2. Section 804. Early Termination has been deleted in its entirety.



## KONICA MINOLTA

3. The following Sections have been added to the Agreement:

**913. Data Privacy:**

1. KMBS will use Customer Data only for the purpose of fulfilling its duties under this Agreement and will not share such data with or disclose it to any third party without the prior written consent of the Customer, except as required by this Agreement or as otherwise required by law.
2. KMBS will provide access to Customer Data only to its employees and subcontractors who need to access the data to fulfill KMBS's obligations under this Agreement. KMBS will ensure that employees who perform work under this Agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this Agreement.

**914. Data Security:**

1. KMBS will store and process Customer Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. KMBS shall implement and maintain reasonable security procedures and practices that are appropriate to the nature of the personal information disclosed to KMBS and are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction. Such measures will be no less protective than those used to secure KMBS's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Without limiting the foregoing, KMBS warrants that all electronic Customer Data will be encrypted in transmission (including via web interface) and stored at no less than 128-bit level encryption and in any event, will use no less than industry best practices.
2. KMBS will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing Services under this Agreement.

**915. Insurance:**

- a. KMBS will purchase and maintain during the entire term of this Contract, comprehensive general liability insurance, and workers' compensation insurance with limits of not less than those set forth below. On each policy, KMBS will include the Customer as an additional insured, with the exception of the workers compensation insurance.

i. Comprehensive General Liability Insurance:

- (1) Personal injury liability insurance with a limit of \$2,000,000 each occurrence/aggregate;
- (2) Property damage liability insurance with limits of \$2,000,000 each occurrence/aggregate.

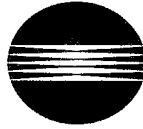
All insurance shall include completed operations and contractual liability coverage.

ii. Automobile Liability Coverage: Automobile fleet insurance \$2,000,000 for each occurrence/aggregate; property damage - \$1,000,000 for each occurrence/aggregate.)

iii. Workers' Compensation Insurance: KMBS shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation insurance. KMBS shall provide workers' compensation insurance meeting the statutory limits for Maryland and Employers' Liability limits of \$500,000. All Corporations are required to provide Workers' Compensation Certificates of Insurance.

Above referenced limits may be satisfied using any combination of underlying and excess/umbrella policies.

KMBS covenants to maintain insurance, in these amounts, which will insure all activities undertaken by KMBS on behalf of the Customer under this Agreement. Copies of the certificates of insurance and additional insured endorsements for all required coverage shall be furnished to the Customer within five (5) business days following the execution of this contract and prior to commencement of any work. The Customer shall receive



## KONICA MINOLTA

30 days prior notice of any amendment, reduction or elimination of the insurance coverage required herein. The Customer shall be included on such certificates of insurance, with the exception of the workers compensation insurance.

Provision of any insurance required herein does not relieve KMBS of any of the responsibilities or obligations assumed by the KMBS in the contract awarded, or for which the KMBS may be liable by law or otherwise. Provision of such insurance is not intended in any way to waive the Customer's immunities or any damage limits applicable to municipal government as provided by law.

- b. The KMBS shall also furnish to the Customer a Certificate of Insurance and additional insured endorsement in like amounts for any approved sub-contractors prior to commencement of work in the Customer.
  - c. All accidents resulting in injury to or death of persons or damage to property of others arising out of the performance, or suits instituted against the KMBS and/or Customer arising out of such accidents shall be reported promptly to the Customer Project Manager.
4. Except as otherwise expressly provided in this Amendment, all other terms and conditions of the KMBS Standard Maintenance Terms and Conditions – Schedule A Agreement shall remain in full force and effect.

This Amendment shall be effective upon the Amendment Effective Date.

**Konica Minolta Business Solutions USA, Inc.**  
(Home office acceptance)

**Chevy Chase Village**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Agreement #  
(KMBS use only)

Customer Address:  
Street \_\_\_\_\_  
City / State \_\_\_\_\_  
Zip Code \_\_\_\_\_  
Phone number: \_\_\_\_\_  
eMail address: \_\_\_\_\_